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10 Attorneys for Defendants
ERICK GELHAUS and COUNTY OF SONOMA

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 ESTATE OF ANDY LOPEZ, BY AND
15 THROUGH SUCCESSORS IN INTEREST,
RODRIGO LOPEZ AND SUJAY CRUZ, AND
16 RODRIGO LOPEZ AND SUJAU CRUZ,
INDIVIDUALLY,

17 Plaintiffs,

18 v.

19 ERICK GELHAUS, COUNTY OF SONOMA,
20 DOES 1 – 10, INCLUSIVE,

21 Defendants.

CASE NO.: CV 13 05124 PJH

**JOINT STATEMENT UPDATING THE
COURT RE: CASE MANAGEMENT
CONFERENCE**

Date: May 15, 2014

Time: 2:00 p.m.

Courtroom: 3, 3rd Floor, Oakland

23 The Court previously granted the County of Sonoma's request for a stay, and set the May 15
24 Case Management Conference date to update the Court to "talk about where to go from there."

25 As of the time of the preparation of this Joint Statement, the Sonoma County District
26 Attorney's Office has not announced a decision as to whether or not criminal charges will be filed
27 as a result of the officer involved shooting which serves as the basis for this lawsuit. The parties'
respective positions on how to best proceed at this time in light of the same are as follows:

1 **Defendants' Position:**

2 Defendants do not have any influence over the timing or outcome of the District
 3 Attorney's Office investigation and charging decision. The best, most recent information
 4 Defendants have with respect to the timing of an intended decision is set forth in a May 5, 2014
 5 newspaper article (copy attached as Exhibit A) in which Sonoma County District Attorney Jill
 6 Ravitch is quoted as saying that she had hoped to have a decision within 90 days from their office's
 7 receipt of the SRPD investigation regarding the shooting (which occurred on or about January 29,
 8 2014), but has emphasized that the 90 day timeframe was a guideline, not a requirement. District
 9 Attorney Ravitch went on record saying that her office is "diligently moving through the
 10 investigative reports and evidence," and that the timeline for the final decision will be "determined
 11 by the investigation, not politics."

12 As set forth in defendants' previous motion, until the District Attorney's Office makes its
 13 determination as to whether or not criminal charges will be brought against the involved deputies,
 14 including defendant Erick Gelhaus, the SRPD investigation containing witness statements and
 15 pertinent evidence remains confidential, and defendants will be substantially prejudiced in terms of
 16 proceeding forward, including responding to the Complaint, providing any meaningful Rule 26
 17 Initial Disclosures, or otherwise make informed decisions required for an Initial Case Management
 18 Conference (including length of trial, appropriate ADR, discovery agreements, etc.), as defendants'
 19 counsel do not have the requisite facts and evidence in hand.

20 Defendants, plaintiffs and the community are all anxious to learn of the District Attorney's
 21 Office's decision, but defendants have no reason to believe that the District Attorneys' office is
 22 doing anything other than moving as diligently as possible on a high profile case in order to make
 23 the best informed decision, and it seems likely that a decision will be forthcoming shortly. For the
 24 above reasons, and as further articulated in defendants' motion to stay, defendants request that the
 25 Case Management Conference be continued for approximately 30 – 45 days. By that time, it would
 26 certainly be hoped and anticipated, for the benefit of all involved, that a final decision will have
 27 been made by the District Attorney's Office, and defendants would therefore be in a position to
 28 begin defending themselves in the civil case if charges are not brought (including being provided

1 with the underlying investigation and evidence), or if criminal charges are brought, the court will be
2 in a position to assess the best course of action from there.

3 Defendants will be in a position to respond to the Complaint and have an Initial Case
4 Management Conference, including Rule 26 disclosures, within 30 days of public announcement of
5 the charging decision. If the Court is inclined to set an outside date by which defendants would be
6 required to respond to the Complaint and set an Initial Case Management Conference, defendants
7 suggest setting the same for July 17, 2014.

8 **Plaintiffs' Position:**

9 Plaintiffs respectfully submit that at the very least, a partial lifting of the stay is appropriate
10 at this juncture. A limited stay can continue with respect to discovery aimed at Mr. Gelhaus.

11 There is little if any prejudice that would befall defendants if this matter were allowed to
12 continue forward. Initial disclosures can be postponed until after a reasonable time after the
13 District Attorney makes her decision.

14 The parties should be ordered to meet and confer to discuss a discovery schedule and the
15 present defendants should be ordered to answer the complaint in 30 days. This would allow the
16 parties to make progress in the prosecution of this case while the parties await the district attorney's
17 decision.

18 DATED: May 12, 2014

GEARY, SHEA, O'DONNELL, GRATTAN &
19 MITCHELL, P.C.

20 By /s/ Steven C. Mitchell
21 STEVEN C. MITCHELL
22 Attorneys for Defendants
23 ERICK GELHAUS and COUNTY OF
SONOMA

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1 DATED: May 12, 2014

McNAMARA, NEY, BEATTY, SLATTERY,
BORGES & AMBACHER LLP

7 DATED: May 12, 2014

CASILLAS, MORENO & ASSOCIATES

9 By /s/ James V. Fitzgerald

4 JAMES V. FITZGERALD, III
5 Attorneys for Defendants
6 ERICK GLEHAUS and COUNTY OF
7 SONOMA

10 By /s/ Arnoldo Casillas

11 ARNOLDO CASILLAS
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13 ESTATE OF ANDY LOPEZ, by and
14 through successors in interest, RODRIGO
15 LOPEZ and SUJAY CRUZ, and
16 RODRIGO LOPEZ and SUJAY CRUZ,
17 Individually.